IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ROTHSCHILD PATENT IMAGING LLC,	§	
	§	
Plaintiff,	§	Case No: 2:16-cv-1382-RWS
	§	
vs.	§	
	§	
TRENDNET, INC.	§	
	§	
Defendant.	§	
___________________________________	§	

PLAINTIFF ROTHSCHILD PATENT IMAGING LLC'S SUR-REPLY TO DEFENDANT's MOTION TO DISMISS

Plaintiff herein responds to Defendant Trendnet, Inc.'s ("Defendant") Motion to Dismiss ("Motion"). For at least the reasons provided below, Defendant's Motion should be denied.

I. Introduction

Defendant continues to advance two arguments, both of which fail. First, Defendant contends that Plaintiff has not pled several elements of the asserted claim (Claim 1) of the '437 Patent. This simply is not correct. Defendant is attempting to make a non-infringement argument rather than properly pointing to any claim elements that have not been pled. Second, as to Counts I and II of the complaint, Defendant continues to argue about the meaning of the word "mobile" and contends that because "mobile" cannot read on their product, Plaintiff cannot reasonably allege that this claim element is met. Defendant's restrictive definition of mobile is unreasonable and ignores the tenets that the claims must be given their broadest reasonable interpretation and that all reasonable inferences must be drawn in favor of the non-movant. Because Plaintiff has pled all of the elements of the asserted claims, and because the accused devices are in fact mobile, Defendant's motion should be denied.

II. Plaintiff Has Pled All of the Elements of Asserted Claim 1 of the '437 Patent

Defendant continues to argue that Plaintiff has not pled all of the elements of Claim 1 of the '437 Patent. Defendant now provides a chart that supposedly shows which claim elements are not pled. *See* Reply at 2. These claim elements include "receiving device," "wireless network," and "capturing device and receiving device disposed in a selectively paired relationship." *Id*. Defendant continues to ignore the allegations made in the Complaint. Regarding "receiving device," paragraph 49 of the Complaint clearly alleges "a receiving device (e.g., smartphone with installed TRENDnet Cloudview app or other app, and which has a Wi-Fi/802.11b/g/n receiver antenna). Regarding "wireless network," paragraph 50 clearly alleges that the "capturing device and receiving device are cooperatively disposed in a communicative relation with one another via at least one wireless network. For example, the receiving device can live stream, through a 3G/4G/Wi-Fi network, images transmitted by the image capturing device." Regarding "capturing device and receiving device disposed in a selectively paired relationship," paragraph 54 clearly alleges that the "capturing device and the receiving device are disposed in a selectively paired relationship with one another. For example, the TRENDnet wireless camera and the mobile device having the TRENDnet CloudView app or other app are connected via the wireless network to enable the mobile device to live stream images transmitted by the TRENDnet wireless camera."

Defendant's argument regarding the infringement allegations made in Count III (in connection with the '437 Patent) appear to be focused on a noninfringement position, rather than properly identifying any missing allegations. Defendant states that "[t]o prove infringement upon claim 1, Plaintiff plead (and ultimately prove) that all these separate and distinct elements in claim 1 are found to exist in the accused Product." Reply, at 2. Defendant also asserts that "this 'smartphone' element is OUTSIDE of the accused Products." *Id*. Defendant is apparently confusing noninfringement arguments with pleading requirements. Defendant will undoubtedly attempt to develop its noninfringement positions during the course of litigation and will advance those positions at trial. The present issue, however, is whether Plaintiff has made the required allegations – which it has.

Moreover, Defendant's theories regarding noninfringement do not hold water. For example, regardless of whether a smartphone is "in" the accused product, Defendant is using the smartphone by way of its CloudView app. In other words, even if Defendant is not selling smartphones, it can still be infringing by using them.

As another example, Defendant argues that a "wireless network" is not "within" the accused product. First, the asserted claim only recites "wireless network" referentially, as in: "said capturing device and said receiving device being cooperatively disposable in a communicative relation with one another via at least one wireless network," for example. Arguably, a wireless network itself is not even a required element of the accused products. Rather, what is required is the recited functionality ***via*** at least one wireless network. Second, Defendant's argument again ignores that fact that its device is using a wireless network. Whether Defendant sells wireless networks is not relevant.

Arguments for infringement or noninfringement aside, the bottom line is that Plaintiff has adequately pled its case for infringement and has specifically alleged that Defendant is practicing each and every element of the asserted claim. For at least these reasons, Defendant's motion regarding Count III should be denied.

III. Defendant Continues to Advance an Unreasonable Definition of "Mobile"

As Plaintiff stated in its Response, the plain and ordinary meaning of the word "mobile" is "capable of moving or of being moved from place to place." Defendant now argues that

Plaintiff's definition is "out of context." It was Defendant, however, that noted that neither the '437 Patent nor its file history gave any meaning or context to the word "mobile." Plaintiff is entirely justified in relying on a plain and ordinary meaning for this term. Further, giving all reasonable inferences to the non-movant, Plaintiff is entitled to its proffered definition of "mobile."

In its Reply, Defendant now offers several analogies in an attempt to show why its devices are not "mobile." The first is that if its devices are considered mobile then all things on earth are mobile because the Earth is moving around the Sun. Reply, at 4. This strains credulity.

Defendant also points to four other completely unrelated devices (lawn sprinklers, washer/dryer sets, wall mount phones, and chandeliers). Reply, at 4. First, Defendant's own argument provides at least some basis for saying that these devices are also "mobile." Second, these devices have nothing to do with the accused products, such as the Baby Cam. Third, and most importantly, these devices are all distinct from the accused products in a very particular way. The devices in Defendant's analogies would all lose their operability if they were moved. If those devices were moved, they would not function without additional physical modifications. For example, if the lawn sprinklers were moved, they would cease to function unless the water lines were also moved, or new water lines were installed and attached to the sprinklers. On the other hand, the accused products function whether they are placed in one location or another. They are relatively small devices and are movable from place to place. A typical use of the products involves placing them on a shelf. Users commonly move them from the shelf to another shelf or to the top surface of a piece of furniture, such as a dresser. The accused products continue to function without any additional physical modifications such as the movement or addition of electrical wires, brackets, switches, phone lines, etc.

Defendant also points to other patents by the same inventor (Rothschild) as indicative of the context for the term "mobile." Defendant focuses on a line from the '337 Patent and argues that a "mobile" device is one which may be attached to a person's clothing. First, the '337 Patent is not at issue. The invention in that patent has nothing to do with the invention claimed in the patents-in-suit. Second, while the inventor gave examples of mobile devices in the '337 Patent, there is nothing in the '337 Patent that restricts the term "mobile device" to those specific examples.

Defendant advocates using context to determine the meaning of "mobile" and then cites to examples and analogies that are completely out of context. If context is the issue, then a better example of the context in the present case is that the accused products are small, wireless devices. And, one of the reasons that the accused products are small, wireless devices is so that they can easily be moved from location to location and maintain functionality without additional physical modifications. In other words, the accused products are "mobile." For at least these reasons, Defendant's motion regarding Counts I and II should be denied.

V. CONCLUSION

Defendant's sole basis for moving to dismiss Count III is that all of the claim elements are not pled. Defendant's noninfringement arguments aside, Plaintiff has expressly pled each and every claim element. A cursory review of the complaint reveals that this is true. Regarding Counts I and II, Defendant's analogies only highlight the mobility of the accused devices. The accused devices are small, wireless devices that can easily be moved from place to place and are, therefore, "mobile." Plaintiff's Complaint sufficiently pleads a claim for relief. Therefore, Defendant's Motion should be denied.

Dated: March 24, 2017

Respectfully submitted,

/s/ Jay Johnson
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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on March 24, 2017.

/s/ Jay Johnson
Jay Johnson